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RUEHUL/AMEMBASSY SEOUL PRIORITY 3212  
RUEHKO/AMEMBASSY TOKYO PRIORITY 9360  
RUEHWL/AMEMBASSY WELLINGTON PRIORITY 1770  
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C O N F I D E N T I A L SECTION 01 OF 03 BANGKOK 003238

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [KDEM](#) [KIRF](#) [TH](#)

SUBJECT: THAILAND'S DRAFT CONSTITUTION NEARS COMPLETION

REF: A. A) BANGKOK 3210 (THAI JUNE 11 ROUNDUP)

- [1](#)B. B) BANGKOK 3186 (THAILAND'S ROAD TO ELECTIONS)
- [1](#)C. C) BANGKOK 2994 (TRT DISSOLVED)
- [1](#)D. D) BANGKOK 2364 (THAI PRO-BUDDHISM PROTEST WILTS)

Classified By: Political Officer Guy Margalith, reason: 1.4 (b,d).

#### SUMMARY

[1](#)1. (C) Thailand took one step closer to finalizing its new constitution on June 11 when the Constitutional Drafting Committee (CDC) submitted their final revisions to the Constitutional Drafting Assembly (CDA). Although the CDA can still make several changes prior to voting in early July on whether to send the charter for public approval in a planned August referendum, the draft illuminates the likely outcome of several controversial provisions. Public comments and criticism of the CDC's preliminary April draft have led to a significant number of changes. The final document is likely to more closely resemble the abrogated 1997 constitution than the original draft albeit with some substantial changes to the character of Thailand's representative democracy. End Summary.

#### THE BEGINNING OF THE END

[1](#)2. (C) On June 11, the 35-member Constitution Drafting Committee turned over their finalized draft to the 100-member Constitution Drafting Assembly after a one month public review period for the initial draft released in mid-April. CDC Chairman Prasong Soonsiri claimed that his body had modified more than 100 clauses from an initial draft that many considered somewhat schizophrenic. While it provided strong protections for civil and human rights, the political system it envisioned was rightly viewed as less democratic than the previous charter. The public participation process, while far from perfect, has clearly highlighted widespread objections by both political parties and the public to a number of provisions in the draft. The CDC appears to have made a significant number of changes and on some of the most controversial subjects in response.

#### CHANGES IN THE HOUSE

13. (U) Both the preliminary and revised constitutional drafts call for a 400-member House of Representatives, of which 320 seats will be filled by politicians running in electoral districts, while the remaining seats will be filled based on a party-list vote. However, where the preliminary draft called for each district to elect three MPs, the revised draft now calls for one seat per constituency. (Note: This appears to be the system preferred by most prominent political parties including former Thai Rak Thai politicians. End Note.) Additionally, instead of calling for each of four regions to contribute 20 of the party-list seats, the finalized draft now requires eight geographic regions to each contribute 10 MPs. (Comment: Eliminating the single, national party list reduces the stature of the Party Leader; deposed Prime Minister Thaksin irked some by claiming that all votes for Thai Rak Thai's party list, which he headed, represented support for him personally. This move also represents a form of gerrymandering, which will benefit parties with a strong presence in certain regions. Elements of this regional party list system remain unclear, to be defined by future legislation. End Comment.)

#### A SEMI-ELECTED SENATE

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14. (U) Some politicians and academics had criticized the preliminary draft as regressive because of the inclusion of a 160-seat appointed Senate. The CDC appears to have compromised, and the new draft calls for a 150-seat semi-elected Senate. Each of Thailand's 76 provinces will elect one Senator, and the remaining 74 seats will be appointed from academia, government, private and other professional sectors. After three years a random lot drawing

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will select 37 of the 74 appointed Senators for replacement, also by selection.

#### NO STATE RELIGION

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15. (U) Several large Buddhist organizations had publicly demanded the constitutional designation of Buddhism as Thailand's state religion after it had been omitted from the preliminary draft (ref D). Despite the tepid endorsement of some prominent Thai politicians, the CDC ultimately declined to include this provision. While some ecclesiastical groups remain steadfast, and a group of monks continue to stage a hunger strike and protest in front of parliament to draw attention to their cause, the monks do not seem to be turning out large enough numbers to intimidate the CDA (ref A).

#### CRISIS COUNCIL SCRAPPED

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16. (U) The constitution drafters also voted to remove controversial provisions establishing a crisis council should the country face a political impasse or state of emergency. The public generally looked askance at this provision, noting it was vague and gave overly broad responsibilities to the council, which would have included the Prime Minister, and the leaders of the House of Representatives, the Senate, the country's highest courts, and independent state bodies.

#### AMNESTY PROVISIONS DELETED

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17. (C) The CDC ultimately removed a contentious provision in the preliminary draft that some legal experts had interpreted as granting amnesty to coup leaders. Some CDC members claim that they actually included the clause to protect the graft-fighting Asset Examination Commissioners (AEC), who have been investigating allegations of corruption committed by the deposed government: AEC members fear they might be sued for their actions once the new government is in place.

The CDA may yet choose to reintroduce a clause that shows more clearly who would benefit from an amnesty. Further limiting possible confusion, the CDC ultimately inserted a provision dissolving the Council for National Security (CNS) when a new cabinet takes office.

#### COVERING THE BASES WITH DISSOLVED PARTIES

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¶8. (U) The revised draft constitution codifies a legally binding pronouncement issued after the September coup which stripped the voting rights of the executive board members of a party dissolved for violating the Political Party Law. The inclusion of this provision in the constitution reduces the likelihood that a future government could overturn the ban of 111 executive board members of the former ruling Thai Rak Thai party from holding elected office (ref C).

#### CIVIL RIGHTS

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¶9. (C) The preliminary draft charter had been praised by human rights NGOs and academics for the inclusion of progressive civil rights provisions. Legal experts felt the preliminary draft improved upon earlier constitutions, as many of the rights and liberties enumerated therein would not have required enabling legislation to take effect. The current draft has been walked back to some degree, but still includes safeguards at least as strong as those in the 1997 constitution, according to a prominent jurist on the CDC.

#### RETAINED PROVISIONS

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¶10. (U) Some important elements from the preliminary draft remained unchanged in the CDC's final revision, including the requirement that the Prime Minister be an elected member of parliament, and provisions giving the courts unprecedented power to select the heads of the country's independent state organizations including the National Counter Corruption

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Commission and the National Election Commission. (The selection of these by the Senate under the 1997 constitution was widely viewed as a failure as the Senate was seen as partisan, contrary to its mandate. It is hoped that judges would choose more impartially.) It also appears that a provision in the original draft allowing a similar group to select the 74 appointed senators remains unchanged. The drafters have also retained a clause limiting the Prime Minister to only two terms or a maximum of eight years in office.

#### A FINAL DRAFT BY JULY

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¶11. (C) The 100-member CDA now has less than a month to debate and revise the CDC's revised draft. The CDA will have its final vote on the completed draft on July 5 or 6. It remains at least theoretically possible for the draft to fail at this point, if a majority of the 100 CDA members do not vote in favor of the finished product. It is also possible for the CDA to introduce major changes, or reinstate controversial elements the CDC dropped. At this point, however, there is no sign either of these will happen.

#### COMMENT

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¶12. (C) Although many have condemned elements of the new constitution as regressive (specifically, the provisions for selected -- rather than elected -- Senators and the powers given to members of the judiciary), the drafting process has led to a draft charter that more closely resembles the abrogated 1997 constitution than many had anticipated. We give the CDC credit for being responsive to public

expressions of concern about provisions in its first draft. The completion of the drafting process and the ensuing referendum will be subject to unpredictable political dynamics, but based on progress to date, we believe the CDC members can claim that they fulfilled their mandate by preparing a reasonable and timely draft that could provide a framework for elections this year. End comment.  
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